

**Notice of Allowability**

Application No.

09/974,809

Examiner

Jerry A. Lorengo

Applicant(s)

BRANDT ET AL.

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the proper T.D. filed 01/02/2004.
2. ☒ The allowed claim(s) is/are 23-40.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/930,464.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>20040502</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                         |
|   | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

(1)

### ***Terminal Disclaimer***

The terminal disclaimer filed on January 2, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,098,689, has been reviewed and is accepted. The terminal disclaimer has been recorded.

(2)

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Robert Patch on February 3, 2004.

#### ***The application has been amended as follows:***

The paragraph appearing in the instant specification at page 1, lines 5-8, has been deleted and replaced with the following:

This application is a continuation of Application No. 09/799,357, filed on March 6, 2001, now abandoned, which is a continuation of 09/634,644, filed August 8, 2000, now abandoned, which is a division of Application No. 08/930,464, filed December 5, 1997, now U.S. Patent No. 6,089,689, issued August 8, 2000, which is the national phase of PCT International Application No. PCT/DE96/00365 filed on March 2, 1996 under 35 U.S.C. § 371, which claimed priority of DE 195 09984, filed March 18, 1995. The entire contents of each of the above-identified applications are hereby incorporated by reference.

In claim 31, "claim 33" has been deleted and replaced with -- claim 23 --.

(3)

### ***Allowable Subject Matter***

Claims 23-40 are allowed.

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(4)

The following is an examiner's statement of reasons for allowance:

In response to the proper terminal disclaimer filed on January 2, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,098,689, claims 23-30, initially rejected under the judicially created doctrine of obvious-type double patenting, have been passed to issue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

(5)

***Drawings***

The application having been allowed, formal drawings are required in response to this Office Action.

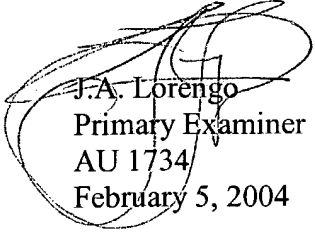
(6)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ***Jerry Lorengo*** whose telephone number is (571) 272-1233. The examiner can normally be reached on ***Monday through Friday, 8:30 A.M. to 5:00 P.M.***

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino, can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
J.A. Lorengo  
Primary Examiner  
AU 1734  
February 5, 2004